

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board. By decision dated April 15, 2013, the Board set aside a June 22, 2012 OWCP decision denying appellant's emotional condition claim.<sup>2</sup> The Board reviewed appellant's allegations that he experienced harassment and abuse by postmasters in December 2011. Appellant argued that on December 21, 2011 two postmasters observed him on his route and questioned why he took more than the allotted time at two locations. On December 27, 2011 two postmasters accompanied him on his route. They ridiculed appellant, gave him confusing and conflicting orders and threatened to rewrite his route description. The Board found that the employing establishment had not submitted a statement addressing appellant's contentions. The Board remanded the case for OWCP to obtain a statement from the employing establishment regarding the incidents identified by him as causing his condition. The facts set forth in the prior decision are hereby incorporated by reference.

On May 9, 2013 OWCP requested that the employing establishment provide comments from a supervisor with knowledge of the allegations set forth by appellant. In a statement dated May 20, 2013, Robert Swanson, a postmaster, challenged appellant's claim. He related that on December 21, 2011 various postmasters and managers from other offices monitored the letter carriers at appellant's work location "to ensure they were working safely. [Appellant] was observed by several managers on the street. [He] was running over his allotted street time." Mr. Swanson asserted that appellant was treated fairly. He stated:

"On December 27, 2011 [appellant] was again observed on the street since he was exceeding his allotted street time. During the observation by the managers, [he] was not harassed or treated unfairly. Management has the right to observe carriers that exceed the normal street time and address any concerns with the employee to correct any deficiencies.

"On December 28, 2011 [appellant] had a light volume of mail and was asked to carry a swing on under time. [He] stated [that] he would not do the work on under time so management went out on the street to observe [him] again. [Appellant] was given instructions throughout the day in order to correct his work deficiencies. Management was professional when dealing with [him]. Management has the right to correct any deficiencies and to address any concerns with the carrier. Everything was done in a professional manner."

In a statement dated June 16, 2013, appellant contended that Mr. Swanson was not working at his location on December 27, 2011 and was unable to address the accuracy of his allegations. He reiterated that he was harassed by the postmasters from the other offices. Appellant related that each Monday he worked two hours of overtime. He stated, "December 27, 2011 was a Tuesday, and after two holidays (Monday closed), the mail volume

---

<sup>2</sup> Docket No. 13-79 (issued April 15, 2013). On December 30, 2011 appellant, then a 62-year-old letter carrier, filed a traumatic injury claim contending that on December 27 and 28, 2011 he was harassed on his route by visiting postmasters. He alleged that he was discriminated against due to his age. OWCP adjudicated appellant's claim as an occupational disease claim as he attributed his condition to events occurring over more than one workday or work shift.

was exceptionally high. I was not running late. The postmaster/managers made an excuse to harass me.” Appellant maintained that he had a normal amount of mail to deliver on December 28, 2011 and was unable to perform an extra loop. He noted that it took him 10.5 hours to complete his route. Appellant indicated that one postmaster, in attempting to show him how to handle mail, put it back in the wrong trays.

By decision dated August 26, 2013, OWCP denied appellant’s claim after finding that he did not establish an injury in the performance of duty. It determined that he had not established a compensable employment factor.

### **LEGAL PRECEDENT**

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers’ compensation. Where the disability results from an employee’s emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>3</sup> On the other hand, the disability is not covered where it results from such factors as an employee’s fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>4</sup>

Administrative and personnel matters, although generally related to the employee’s employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.<sup>5</sup> However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.<sup>6</sup> In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.<sup>7</sup>

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>8</sup> A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.

---

<sup>3</sup> *Supra* note 1; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>5</sup> *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff’d on recon.*, 42 ECAB 556 (1991).

<sup>6</sup> *See William H. Fortner*, 49 ECAB 324 (1998).

<sup>7</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>8</sup> *See Michael Ewanichak*, 48 ECAB 364 (1997).

Grievances and Equal Employment Opportunity complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.<sup>9</sup> The issue is whether the claimant has submitted sufficient evidence under FECA to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>10</sup> The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by OWCP and the Board.<sup>11</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>12</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, it must base its decision on an analysis of the medical evidence.<sup>13</sup>

### ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of several employment incidents and conditions. OWCP denied his emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms FECA. The Board notes that appellant's allegations do not pertain to his regular or specially assigned duties under *Cutler*.<sup>14</sup> Instead, appellant attributed his condition to error and abuse by the employing establishment in administrative matters and harassment by postmasters.

Appellant maintained that he experienced abusive and erroneous supervision by his postmaster and visiting managers on December 21, 27 and 28, 2011 while they observed his route. In *Thomas D. McEuen*,<sup>15</sup> the Board held that an employee's emotional reaction to administrative or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employing establishment

---

<sup>9</sup> See *Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement*, 48 ECAB 302 (1997).

<sup>10</sup> See *James E. Norris*, 52 ECAB 93 (2000).

<sup>11</sup> *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>12</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>13</sup> *Id.*

<sup>14</sup> See *Lillian Cutler*, *supra* note 3.

<sup>15</sup> See *Thomas D. McEuen*, *supra* note 5.

and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the factual circumstances regarding the administrative or personnel action established error or abuse by the employing establishment in dealing with the claimant. Absent such evidence of error or abuse, the resulting emotional condition must be considered self-generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether it acted reasonably.<sup>16</sup>

Appellant asserted that on December 21, 2011 two visiting postmasters watched him deliver his route and questioned how long it took him at two locations. On December 27, 2011 two postmasters accompanied him on his route and gave him confusing and conflicting instructions. On December 28, 2011 appellant's supervisor instructed appellant to deliver an extra loop, Route 6705, even though he had a normal volume of mail to deliver. The monitoring and assignment of work are administrative functions of the employing establishment rather than a duty of the employee and, absent evidence of error or abuse, are not compensable.<sup>17</sup> Complaints about the manner in which a supervisor performs his or her duties or the manner in which a supervisor exercises his or her discretion generally fall outside the scope of coverage provided by FECA.<sup>18</sup> This principle recognizes that a supervisor or manager in general must be allowed to perform his or her duties and employees will, at times, dislike the actions taken. Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent evidence of error or abuse.<sup>19</sup> In a statement dated May 20, 2013, Mr. Swanson, a postmaster, related that it was within the discretion of management to observe appellant on his route on December 21, 27 and 28, 2011 and to address work deficiencies. Appellant has not presented sufficient evidence to support that postmasters or managers acted unreasonably. He has not established a compensable factor of employment with respect to these administrative matters.

Appellant further alleged that the actions taken by management on December 21, 27 and 28, 2011 constituted harassment and discrimination. Harassment and discrimination by supervisors and coworkers, if established as occurring and arising from the performance of work duties, can constitute a compensable work factor.<sup>20</sup> A claimant, however, must substantiate allegations of harassment and discrimination with probative and reliable evidence.<sup>21</sup> Appellant related that, on December 21, 2011, the two postmasters who had watched him on his route challenged the amount of time that he took at two locations. He explained that both locations had a great deal of certified mail. On December 27, 2011 the two postmasters with appellant on his route told him that it should take him 10 seconds to be prepared to deliver mail. The two postmasters continually gave him orders, ridiculed him and told him he was too slow. Appellant told them to stop because he was confused and stressed. He noted that he had a high volume of

---

<sup>16</sup> See *David C. Lindsey, Jr.*, 56 ECAB 263 (2005); *Richard J. Dube*, 42 ECAB 916 (1991).

<sup>17</sup> *Jeral R. Gray*, 57 ECAB 611 (2006); see also *supra* note 11.

<sup>18</sup> See *Judy L. Kahn*, 53 ECAB 321 (2002).

<sup>19</sup> *Id.*

<sup>20</sup> *T.G.*, 58 ECAB 189 (2006); *Doretha M. Belnavis*, 57 ECAB 311 (2006).

<sup>21</sup> *C.W.*, 58 ECAB 137 (2006); *Robert Breeden*, 57 ECAB 622 (2006).

mail to deliver because it was after a holiday and that he was not late but that management wanted a reason to harass him. Appellant felt like “a horse being jockeyed with [a] stick.” On December 28, 2011 his supervisor instructed him to deliver mail on Route 6705 because his route was under time. Two managers went with appellant. Appellant had to repeatedly call the employing establishment to find out street locations because he could not read the map. The managers told him to stop delivering Route 6705 and to deliver his own route by 4:00 p.m., even though he began his route late. Both managers changed instructions and one took mail to show how to do fast fingering but put all the mail in the wrong trays. Appellant’s postmaster was upset that appellant was unable to finish his route by 4:00 p.m. and criticized him. Management threatened to make appellant’s route a walking route.

In a May 20, 2013 statement, Mr. Swanson asserted that on December 21, 27 and 28, 2011 the managers that observed appellant did not treat him unfairly and did not engage in harassment. On December 28, 2011 managers watched him carry a swing route under time and gave him instructions during the day, but acted towards him in a professional manner. Appellant has not submitted any factual evidence in support of his allegations as he has not submitted any corroborating evidence. Mere perceptions of harassment or discrimination are not compensable.<sup>22</sup> While appellant questioned Mr. Swanson’s statement as he was not at the work location at the time of the December 2011 incidents, appellant addressed the specific allegations and responded on behalf of the employing establishment. He has not submitted any evidence to corroborate harassment or discrimination. Appellant has not established a compensable work factor.<sup>23</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty.

---

<sup>22</sup> See C.S., 58 ECAB 137 (2006).

<sup>23</sup> The Board notes that appellant’s supervisor authorized examination of appellant on December 29, 2011 through a Form CA-16. When such a form is properly executed, it creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See Tracey P. Spillane, 54 ECAB 608 (2003); 20 C.F.R. § 10.300(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 26, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 9, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board